IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4740 of 1991
WITH
SPECIAL CIVIL APPLICATION No. 4745 OF 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAICHANDBHAI S/O.DOSHJIBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MS KUSUM M SHAH for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3
NOTICE SERVED for Respondent(s) : 1 - 3.
UNSERVED-EXPIRED (N) for Respondent(s) : 4,
MR MB THAKORE for Respondent(s) : 4,

MR DA DESAI, AGP for Respondent Nos.1,2 and 3

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/10/2005

ORAL COMMON JUDGMENT

1.As common question of law and facts arises in both the petition, they are being disposed of by this common

judgment.

2. So far as the Special Civil Application No.4740 of 1991, the petitioner has challenged the legality and validity of the judgment and order passed by the Deputy Secretary (Appeals) dated 7-3-91 passed in Revision Application No.44 of 1990 in dismissing the same and confirming the order passed by the Collector, Banaskantha dated 30-3-1990 as well as the order passed by the Deputy Collector, Deputy Collector dated 24-11-88 with respect to land bearing Block No.283 (survey No.108/1) admeasuring 36 gunthas situated at village Kumbhalmer, Tal: Palanpur, Dist: Banaskantha.

3. So far as the Special Civil Application No.4745/91 is concerned, the common petitioner has challenged the legality and validity of the judgment and order passed by the Deputy Secretary, Revenue Department dated 7-3-91 passed in Revision Application No. 45/90 in dismissing the same and confirming the order passed by the Collector, Banaskantha dated 31-3-1990 passed in Revision Application No.18/89 as well as the order passed by the Deputy Collector, Palanpur dated 21-11-88 with respect to the land bearing Block No.291 admeasuring 2 acre and 15 gunthas and land bearing Block No.271 admeasuring 3 acre and 4 gunthas situated at village Kumbhalmer, Tal: Palanpur.

4.The land bearing Block No.283 (survey No.108/1) admeasuring 36 gunthas situated at village Kumbhalmer, Tal: Palanpur was owned by Koli Mohan Vala and the same was Pashayata Chakariyat Inami restricted land and the said land came to be purchased by the petitioner (Special Civil Application No.4740/91) by registered sale deed dated 15th February, 1980 without prior permission.

Similarly, the land bearing Block No.291 admeasuring 2 acre and 15 gunthas and land bearing Block No.271 admeasuring 3 acre and 4 gunthas situated at village Kumbhalmer, Tal: Palanpur was owned by Koli Kalu Umed and the said land was granted to him as Pashayata Chakariyat Inami restricted land and the said land came to be purchased by the petitioner (Special Civil Application No.4745/91) by two registered sale deeds dated 18-6-73 as well as 16-3-81.

5.For the aforesaid lands, the Deputy Collector, Palanpur initiated the proceedings for breach of condition and by order dated 21-11-88, forfeited the land to the State Government by cancelling the grant with regard to the aforesaid lands. Being aggrieved by and dissatisfied with the order passed by the Deputy Collector, Banaskantha forfeiting the aforesaid land to the State Government, the petitioner preferred appeals

before the Collector, Banaskantha being Appeal No.17/89 and 18/89 respectively and the Collector, Banaskantha by two separate orders dated 30-3-1990 dismissed the aforesaid two appeals confirming the order passed by the Deputy Collector dated 21-11-88 forfeiting the land to the State Government. Being aggrieved by and dissatisfied with the order passed by the Collector, Banaskantha dated 30-3-90, the petitioner preferred Revision Application before the Addl. Chief Secretary (Appeals) State of Gujarat being Revision Application Nos.44/90 and 45/90 and the Deputy Secretary (Appeals) by order dated 7-3-91 dismissed both the aforesaid Revision Applications confirming the order passed by the Collector, Banaskantha as well the Deputy Collector, Palanpur forfeiting the aforesaid lands in question to the Government and canceling the grant. Being aggrieved by and dissatisfied with the judgment and order passed by the Deputy Secretary (Appeals) dated 7-3-91 passed in Revision Application Nos.44/90 and 45/90, the petitioner has preferred the aforesaid two Special Civil Applications under Articles 226 and 227 of the Constitution of India.

6. Shri SK Shah, learned advocate appearing on behalf of the petitioner has vehemently submitted that all the authorities below have materially erred in not granting

the benefit of the Government Resolution with regard to the regularization of the sale transaction and for *ex post facto* permission. It is also further submitted that as such the Deputy Collector initiated the proceedings after a period of 7 years i.e. after unreasonable period , which was not permissible. It is also further submitted that in fact, there were three Special Civil Applications filed and the third Special Civil Application was Special Civil Application No.4732 of 1991 and in which the similar breach was there and there also the Pashayata Chakariyat Inami restricted land was purchased by the petitioner without getting any prior permission and the said Special Civil Application came up for hearing before the learned Single Judge of this court (Coram: H.R.Shelat,J, as he then was)and this court by its judgment and order dated 19-9-2000 allowed the said Special Civil Application and remanded the matter to the Deputy Secretary to consider the request of the petitioner and the case in light of the circulars dated 11-6-1968 and 13-7-1983 with regard to regularization, therefore, it is requested to pass similar order.

7. Shri DA Desai, learned AGP appearing on behalf of the State of Gujarat is not in a position to dispute that the present Special Civil Applications are covered by

the judgment of this court passed in the aforesaid Special Civil Application No.4732/91 and he has also not in a position to dispute that the facts were not identical to that of the present Special Civil Applications.

8. Heard learned advocates for the parties.

9. The identical question came to be considered by this court in aforesaid Special Civil Application No.4732/91 and in that case also the transaction with regard to the Pashayata Chakariyat Inami restricted land which came to be purchased by the very petitioner without obtaining any prior permission and two Government Circulars dated 11-6-68 and 13-7-83 were pressed into service and the learned Single of this court (Coram: H.R. Shelat,J, as he then was) by its judgment and order dated 19-9-2000 has quashed and set aside the orders passed by the lower authorities and directed the Deputy Collector, Palanpur to consider the request of the petitioner and to consider the aforesaid two circulars and to consider whether the transaction in question can be regularized and/or *ex post facto* permission can be granted on imposition of the punishment with the petitioner has agreed to pay.

10. For the reasons as stated above and for the reason as stated in the Special Civil Application No.4732/91, the

impugned order passed by the Deputy Collector, Palanpur, Collector, Banaskantha as well as the Deputy Secretary (Appeals), Revenue Department, State of Gujarat are hereby quashed and set aside and the matter is referred back to the Deputy Collector, Palanpur with a direction to consider the representation of the petitioner to be filed within a period of one month from today and the Deputy Collector, Palanpur is directed to consider the same and pass appropriate order in accordance with law and on merits considering the above two circulars and the law applicable. The Deputy Collector, Palanpur may also consider the grant of *ex post facto* permission if it is permissible in accordance with law and on payment of fine, penalty etc. if it is permissible. The parties to maintain status-quo till representation is filed and the Collector, if the petitioners move for interim relief, shall also consider the same and pass appropriate order in that regard. It will be open for the petitioner to annex the copy of the judgment and order passed by this court, which is in Special Civil Application No.4732/1991 along with his representation.

11. Rule is made absolute in each of the petition. However, there will be no order as to costs.

(M.R.SHAH,J)

Shekhar/-